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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2009 NOV 12 P 4: 12 Arizona Corporation Commission

DOCKETED

NOV 12 2009

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[Signature]

In the matter of:

SIR MORTGAGE & FINANCE OF
ARIZONA, INC., an Arizona corporation,

GREGORY M. SIR (a/k/a "GREG SIR"), and
ERIN M. SIR, husband and wife,

Respondents.

DOCKET NO. S-20703A-09-0461

**SECURITIES DIVISION'S OBJECTION
TO RESPONDENTS' REQUEST FOR
ISSUANCE OF ADMINISTRATIVE
SUBPOENAS FOR TESTIMONY AND
DOCUMENTS**

Pursuant to R.14-3-109(O) of the Rules of Practice and Procedure before the Corporation Commission ("Commission"), the Securities Division ("Division") objects to RESPONDENTS' unsupported request for administrative subpoenas for:

1. Testimony of Paula Brody to take place at the office of RESPONDENTS' counsel on Friday, December 11, 2009, beginning at 9:30 a.m.; and
2. Testimony of Melvin I. Brody to take place at the office of RESPONDENTS' counsel on Friday, December 10, 2009, beginning at 9:30 a.m. (collectively, the "Subpoenas for Testimony"),

and

1. Documents to be produced to RESPONDENTS by Paula Brody on December 2, 2009; and
2. Documents to be produced to RESPONDENTS by Melvin I. Brody on December 2, 2009 (collectively, the "Subpoenas for Documents").

RESPONDENTS have not complied with the applicable procedure for procuring lawfully issued subpoenas for documents and testimony in administrative proceedings before the Commission.

1 R14-3-109(O) provides that RESPONDENTS' requests for the issuance of the Subpoenas for
 2 Testimony and Documents must be supported by an "application" submitted to the Administrative
 3 Law Judge.¹

4 Rule 14-3-106(F) states that an application "shall contain the facts upon which the
 5 application, with such exhibits as may be required or deemed appropriate by the applicant."

6 Further, the parameters of discovery in administrative proceedings is set forth in the chapter
 7 on Administrative Procedure, A.R.S. § 41-1001, *et seq.* Under Article 6 of this chapter, covering
 8 "Adjudicative Proceedings," Arizona law provides as follows:

9 *A.R.S. § 41-1062: Hearings; evidence; official notice; power to require testimony and*
 10 *records; Rehearing*

11 A. Unless otherwise provided by law, in contested cases the following shall apply:

12 ...

- 13 4. The officer presiding at the hearing may cause to be issued
 14 subpoenas for the attendance of witnesses and for the production of
 15 books, records, documents and other evidence and shall have the
 16 power to administer oaths.... *Prehearing depositions and*
 17 *subpoenas for the production of documents may be ordered by the*
 18 *officer presiding at the hearing, provided that the party seeking*
 19 *such discovery demonstrates that the party has reasonable need of*
 20 *the deposition testimony or materials being sought....*
 21 *Notwithstanding the provisions of section 12-2212, no subpoenas,*
 22 *depositions or other discovery shall be permitted in contested*
 23 *cases except as provided by agency rule or this paragraph.*

24 (emphasis added). Thus, the only forms of pre-trial discovery permitted in administrative
 25 proceedings are: (a) subpoenas, based on a showing of need and authorized by the administrative
 26

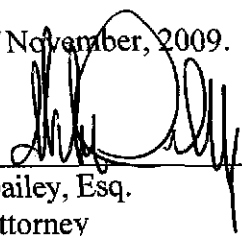
¹ Moreover, the authority to pursue discovery during the course of an administrative proceeding is not
 conferred as a matter of right. In fact, courts have repeatedly recognized that there simply is no basic
 constitutional right to pretrial discovery in administrative proceedings. *Silverman*, 549 F.2d. at 33 (7th Cir.
 1977). The federal Administrative Procedures Act echoes this point by offering no provision for pretrial
 discovery during the administrative process. 1 Davis, *Administrative Law Treatise* (1958), § 8.15, p. 588;
 see also, *See, e.g., 73A C.J.S. Public Administrative Law and Procedure*, § 124 (1983)("Insofar as the
 proceedings of a state administrative body are concerned, only the methods of discovery set forth by the
 pertinent statute are available, and the methods not set forth therein are excluded"); see also 2 Am.Jur.2d.
Administrative Law § 327 (2d. ed. 1994)(In the context of administrative law, any right to discovery is
 grounded in the procedural rules of the particular administrative agency).

1 hearing officer; (b) depositions, based on a showing of need and authorized by authorized by the
2 hearing officer; and (c) any other discovery provision specifically authorized under the individual
3 agency's rules of practice and procedure.

4 Applied here, RESPONDENTS' request for the issuance of the Subpoenas for Testimony
5 and Documents must be quashed because it is not supported by an application or motion
6 demonstrating, for example, the facts underlying their request, or an appropriate citation to any
7 exhibits. RESPONDENTS have also failed to set forth any facts or arguments demonstrating
8 that they have a "reasonable need" to obtain documents and testimony from Mr. Brody and/or
9 Ms. Brody.

10 Based on the foregoing, the Division respectfully requests that RESPONDENTS' request
11 for issuance of the Subpoenas for Testimony and Documents be denied.

12 **RESPECTFULLY SUBMITTED** this 12th day of November, 2009.

13 
14 _____
15 Mike Dailey, Esq.
16 Staff Attorney
17 Securities Division
18 1300 West Washington, Third Floor
19 Phoenix, Arizona 85007

20 **ORIGINAL AND THIRTEEN (13) COPIES**
21 **of the foregoing filed this 12th day of**
22 **November, 2009 with:**

23 Docket Control
24 Arizona Corporation Commission
25 1200 West Washington
26 Phoenix, Arizona 85007

Copy of the foregoing hand-delivered this 12th day of
November, 2009 to:

Marc E. Stern, Administrative Law Judge
Arizona Corporation Commission
Hearing Division
1200 West Washington
Phoenix, Arizona 85007

1 **Copy of the foregoing mailed this 12th day of**
2 **November, 2009 to:**

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